

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Erica Borbe; Dennis S. Voss; Horse Butte
Ranch LLC

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0349-R-2022

40A 201287-00
40A 201288-00
40A 201289-00
40A 201290-00
40A 201292-00
40A 201293-00
40A 201294-00
40A 201295-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 201287-00, 40A 201288-0, 40A 201289-00, 40A 201290-00, 40A 201291-00, 40A 201292-00, 40A 201293-00, 40A 201294-00, and 40A

201295-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into Water Court Case 40A-0349-R-2022 on November 1, 2022. The consolidation order set a deadline by which Claimants where to comment on a proposed action. Claimants did not file any responses by the deadline.

FINDINGS OF FACT

1. Claims 40A 201287-00, 40A 201292-00, 40A 201293-00, and 40A 201294-00 appeared with the following issue remarks:

RESERVOIR RECORDS WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

POINT OF DIVERSION NO. 2 APPEARS TO BE INCORRECT. THE HEADGATE APPEARS TO BE LOCATED IN THE NESESW SEC 32 TWP 7N RGE 13E WHEATLAND CO.

PERIOD OF DIVERSION COULD NOT BE MODIFIED DUE TO WATER COURT MODIFICATIONS. ACCORDING TO RESERVOIR PERIOD OF DIVERSION QUESTIONNAIRE RECEIVED 1/17/2017, PERIOD OF DIVERSION SHOULD BE YEAR ROUND.

2. Claims 40A 201288-00, 40A 201290-00, 40A 201291-00, and 40A 201295-00 appeared with the following issue remark:

THIS WATER RIGHT AND LATE CLAIM NO. 40A 215586-00 WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. AN OVERLAPPING OWNERSHIP REMARK NEEDS TO BE ADDED TO THIS RIGHT. WATER RIGHT NUMBERS TO BE INCLUDED IN THE REMARK ARE 40A 201288-00, 40A 201290-00, 40A 201291-00, 40A 201295-00, 40A 215586-00.

3. Claim 40A 201289-00 appeared with the following issue remarks:

POINT OF DIVERSION NO. 2 APPEARS TO BE INCORRECT. THE HEADGATE APPEARS TO BE LOCATED IN THE NESESW SEC 32 TWP 7N RGE 13E WHEATLAND CO.

RESERVOIR RECORDS WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

4. The Court also called each above-captioned claim in on its own motion, except for Claim 40A 201288-00. The reason for calling the claims in was to give notice to the basin of certain modifications made to the claims as a result of litigation in Water Court Case 40A-264. This action served its purpose and does not present additional issues to resolve.

5. The Court noted the following in the consolidation order for this case:
The period of use of the relevant claims was set via Master's Report in Case 40A-264. *See* Master's Report, Case 40A-264, Finding of Fact No. 107, issued March 8, 2011. The period of diversion was added to match that period of use, but an issue remark indicating the period of diversion may be incorrect was also added to the claims with reservoirs. *See* Notice of Filing of Second Master's Report, Case 40A-264 Sub-Case B, issued March 10, 2015.

Claimant Erica Borbe filed a completed reservoir questionnaire on January 17, 2017 indicating the historical period of diversion for Claims 40A 201274-00, 40A 201277-00, 40A 201287-00, 40A 201292-00, 40A 201293-00, 40A 201294-00, and 40A 201285-00 is "January 1 to December 31."

6. The Court requested comments regarding whether the proposed periods of diversion for the relevant claims should be adopted. The Court did not receive any responses by the filing deadline.

7. The periods of diversion of Claims 40A 201274-00, 40A 201277-00, 40A 201287-00, 40A 201292-00, 40A 201293-00, 40A 201294-00, and 40A 201285-00 should be described as "January 1 to December 31."

8. Claim 40A 215586-00, referenced in the overlapping place of use issue remark, is a claim owned by the State of Montana Board of Land Commissioners. The priority date of the relevant above-captioned claims pre-dates the State's acquisition of

the place of use in question. In Water Court Case 40A-0546-R-2022, the State filed a Motion to Amend Claim 40A 215586-00 stating:

Additionally, the Ownership Issue (Overlapping POUs) should be removed. The overlapping POU occurs on State land but the priority dates of the non-MSBLC claims predate the States acquisition of the land (1909). Petitioners does not apply.

9. The points of diversion of Claims 40A 201287-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, and 40A 201294-00 were set by the Court in Water Court Case 40A-264. *See* Order Amending and Adopting Master’s Report in Part for Erica Borbe and Dennis S. Voss Claims, issued July 25, 2017. The legal land descriptions of the points of diversion are also included in information remarks which were agreed upon by the parties in that case.

10. The issue remarks on the above-captioned claims should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of each relevant claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

3. The points of diversion of the relevant above-captioned claims should not be changed because the legal land descriptions were set by the Court in a previous case based on agreement of the parties involved.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Erica Borbe
Dennis S. Voss
Horse Butte Ranch LLC
PO Box 297
Two Dot, MT 59085

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201287-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HORSE BUTTE RANCH LLC
PO BOX 297
TWO DOT, MT 59085

Priority Date: JUNE 1, 1898

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.50 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

Volume: 1,513.03 AC-FT

STANDARDS ON VOLUMES FOUND IN THE FINDINGS OF FACT ARE ONLY GUIDELINES. THE VOLUME CALCULATED USING THESE STANDARDS MAY BE MODIFIED BY THE COURT ON INDIVIDUAL OBJECTION.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 522.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

2		NWSE	32	7N	13E	WHEATLAND
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: E. L. SHUMAKER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

ALKALI CREEK IS USED AS A NATURAL CARRIER TO DELIVER THE WATER DIVERTED THROUGH THE E.L. SHUMAKER DITCH TO THE PLACE OF USE.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING: THE FOLLOWING INSTRUCTIONS SHALL APPLY TO CLAIMANTS' USE OF THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE FOX REPLACEMENT DITCH IN THE NENESE SEC. 24, 7N, 13E, IN LIEU OF AND SUBSTITUTE FOR THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH IN THE NWSE SEC. 32, 7N, 13E, TO DIVERT AND USE ANY OF THE WATERS COVERED BY THESE RIGHTS, IN ORDER TO PREVENT ANY ADVERSE EFFECT OR INJURY TO THE OTHER WATER USERS ON BIG ELK CREEK AND ITS TRIBUTARIES.

(A) THE FLOW RATE AVAILABLE FOR DIVERSION THROUGH AND BY MEANS OF THE FOX REPLACEMENT DITCH TO SATISFY THESE RIGHTS SHALL BE LIMITED TO THE AMOUNT OF WATER AVAILABLE AT THE E. L. SHUMAKER DITCH AS MEASURED AT THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH;

(B) WATER DIVERTED BY MEANS OF THE FOX REPLACEMENT DITCH SHALL NOT EXCEED THE CARRYING CAPACITY OF THE EXISTING MEANS OF DIVERSION TO-WIT: A 24 INCH SLIDE GATE AT THE POINT OF DIVERSION AND 24 INCH CORRUGATED METAL PIPE, 20 FEET LONG, SERVING AS A CULVERT IN THE DITCH RUNNING UNDER THE ROAD WHICH RUNS SOUTH OUT OF TWO DOT.

(C) THE WATER RIGHTS LISTED BELOW SHALL NOT BE SUBJECT TO CALL TO SATISFY THIS WATER RIGHT:

- (1) 40A 5024-00, 40A 5025-00, 40A 5026-00, 40A 5027-00, AND 40A 6661-00
- (2) 40A 198477-00, 40A 198478-00, 40A 198479-00, 40A 198480-00, 40A 198481-00, 40A 198482-00, AND 40A 198483-00
- (3) 40A 110017-00, 40A 110018-00, 40A 110019-00, 40A 110020-00, 40A 110021-00, AND 40A 110026-00, AND
- (4) ANY RIGHTS WITH A DATE OF PRIORITY PRIOR TO 1964 OUT OF ANY TRIBUTARY TO BIG ELK CREEK WHICH ENTERS BIG ELK CREEK AT A POINT BETWEEN THE E.L. SHUMAKER DITCH (NWSE SEC. 32, 7N, 13E) AND THE FOX REPLACEMENT DITCH (NENESE SEC. 24, 7N, 13E) INCLUDING BUT NOT LIMITED TO ANY SUCH DIVERSION FROM BEAR CREEK AND CROOKED CREEK.

THIS WATER RIGHT INVOLVES TWO RESERVOIRS. TWO DOT RESERVOIR IS ON ALKALI CREEK. EXCESS WATER IMPOUNDED BY THIS DAM FILLS AN OFF STREAM RESERVOIR WEST OF IT (FOX RESERVOIR). WATER IS TRANSFERRED FROM TWO DOT RESERVOIR TO FOX RESERVOIR VIA A SPILLWAY.

***Reservoir:**

OFFSTREAM **Reservoir Name:** FOX RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	10	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 36.00 ACRES

Capacity: 204.00 ACRE-FEET

***Reservoir:** OFFSTREAM **Reservoir Name:** TWODOT RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2	11	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.00 FEET

Depth: 28.00 FEET

Surface Area: 42.00 ACRES

Capacity: 555.00 ACRE-FEET

SEE THE LEWISTOWN REGIONAL OFFICE ENGINEER EMAIL DATED 05/06/2013 IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR FOX RESERVOIR.

SEE THE PHASE 1 INSPECTION REPORT FOR THE NATIONAL DAM SAFETY PROGRAM IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR TWODOT RESERVOIR.

SEE THE NATIONAL INVENTORY OF DAMS REPORTS IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR BOTH TWODOT RESERVOIR AND FOX RESERVOIR (ALSO KNOWN AS FOX, BILL IRRIGATION).

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.20		NW	2	7N	13E	WHEATLAND
2	25.90		SW	2	7N	13E	WHEATLAND
3	94.60		NE	3	7N	13E	WHEATLAND
4	35.70		SE	3	7N	13E	WHEATLAND
5	7.80		NE	34	8N	13E	WHEATLAND
6	117.30		NW	34	8N	13E	WHEATLAND
7	84.40		SE	34	8N	13E	WHEATLAND
8	89.20		SW	34	8N	13E	WHEATLAND
9	17.30		SW	35	8N	13E	WHEATLAND
Total:	522.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201288-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DENNIS S VOSS
PO BOX 297
TWO DOT, MT 59085 0297

ERICA BORBE
PO BOX 297
TWO DOT, MT 59085 0297

Priority Date: MAY 31, 1891

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 87.60

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.30		SW	12	7N	13E	WHEATLAND
2	36.50		NW	13	7N	13E	WHEATLAND
3	9.80		SE	13	7N	13E	WHEATLAND
4	39.60		SW	13	7N	13E	WHEATLAND
5	1.40		NE	14	7N	13E	WHEATLAND
Total:	<u>87.60</u>						

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201289-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HORSE BUTTE RANCH LLC
PO BOX 297
TWO DOT, MT 59085

Priority Date: AUGUST 20, 1889

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.13 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

Volume: 2,006.50 AC-FT

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Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 522.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

2		NWSE	32	7N	13E	WHEATLAND
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***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: E. L. SHUMAKER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

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(A) THE FLOW RATE AVAILABLE FOR DIVERSION THROUGH AND BY MEANS OF THE FOX REPLACEMENT DITCH TO SATISFY THESE RIGHTS SHALL BE LIMITED TO THE AMOUNT OF WATER AVAILABLE AT THE E. L. SHUMAKER DITCH AS MEASURED AT THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH;

(B) WATER DIVERTED BY MEANS OF THE FOX REPLACEMENT DITCH SHALL NOT EXCEED THE CARRYING CAPACITY OF THE EXISTING MEANS OF DIVERSION TO-WIT: A 24 INCH SLIDE GATE AT THE POINT OF DIVERSION AND 24 INCH CORRUGATED METAL PIPE, 20 FEET LONG, SERVING AS A CULVERT IN THE DITCH RUNNING UNDER THE ROAD WHICH RUNS SOUTH OUT OF TWO DOT.

(C) THE WATER RIGHTS LISTED BELOW SHALL NOT BE SUBJECT TO CALL TO SATISFY THIS WATER RIGHT:

- (1) 40A 5024-00, 40A 5025-00, 40A 5026-00, 40A 5027-00, AND 40A 6661-00
- (2) 40A 198477-00, 40A 198478-00, 40A 198479-00, 40A 198480-00, 40A 198481-00, 40A 198482-00, AND 40A 198483-00
- (3) 40A 110017-00, 40A 110018-00, 40A 110019-00, 40A 110020-00, 40A 110021-00, AND 40A 110026-00, AND
- (4) ANY RIGHTS WITH A DATE OF PRIORITY PRIOR TO 1964 OUT OF ANY TRIBUTARY TO BIG ELK CREEK WHICH ENTERS BIG ELK CREEK AT A POINT BETWEEN THE E. L. SHUMAKER DITCH (NWSE SEC. 32, 7N, 13E) AND THE FOX REPLACEMENT DITCH (NENESE SEC. 24, 7N, 13E) INCLUDING BUT NOT LIMITED TO ANY SUCH DIVERSIONS FROM BEAR CREEK AND CROOKED CREEK.

THIS WATER RIGHT INVOLVES TWO RESERVOIRS. TWO DOT RESERVOIR IS ON ALKALI CREEK. EXCESS WATER IMPOUNDED BY THIS DAM FILLS AN OFF STREAM RESERVOIR WEST OF IT (FOX RESERVOIR). WATER IS TRANSFERRED FROM TWO DOT RESERVOIR TO FOX RESERVOIR VIA A SPILLWAY.

***Reservoir:**

OFFSTREAM **Reservoir Name:** FOX RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	10	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 36.00 ACRES

Capacity: 204.00 ACRE-FEET

*Reservoir: OFFSTREAM Reservoir Name: TWODOT RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2	11	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.00 FEET

Depth: 28.00 FEET

Surface Area: 42.00 ACRES

Capacity: 555.00 ACRE-FEET

SEE THE LEWISTOWN REGIONAL OFFICE ENGINEER EMAIL DATED 05/06/2013 IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR FOX RESERVOIR.

SEE THE PHASE 1 INSPECTION REPORT FOR THE NATIONAL DAM SAFETY PROGRAM IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR TWODOT RESERVOIR.

SEE THE NATIONAL INVENTORY OF DAMS REPORTS IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR BOTH TWODOT RESERVOIR AND FOX RESERVOIR (ALSO KNOWN AS FOX, BILL IRRIGATION).

*Period of Use: MARCH 1 TO NOVEMBER 15

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.20		NW	2	7N	13E	WHEATLAND
2	25.90		SW	2	7N	13E	WHEATLAND
3	94.60		NE	3	7N	13E	WHEATLAND
4	35.70		SE	3	7N	13E	WHEATLAND
5	7.80		NE	34	8N	13E	WHEATLAND
6	117.30		NW	34	8N	13E	WHEATLAND
7	84.40		SE	34	8N	13E	WHEATLAND
8	89.20		SW	34	8N	13E	WHEATLAND
9	17.30		SW	35	8N	13E	WHEATLAND
Total:	522.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201290-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DENNIS S VOSS
PO BOX 297
TWO DOT, MT 59085 0297

ERICA BORBE
PO BOX 297
TWO DOT, MT 59085 0297

Priority Date: JUNE 15, 1889

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201290-00, 40A 201291-00, AND 40A 201295-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 158.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: SANFORD MOORE DITCH (EAST BANK)

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

*Period of Use: MARCH 1 TO NOVEMBER 15

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	77.30		W2	12	7N	13E	WHEATLAND
2	80.00		E2	13	7N	13E	WHEATLAND
3	1.10		NW	13	7N	13E	WHEATLAND
Total:	158.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201290-00 201291-00 201295-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00 201272-00 201273-00 201274-00 201277-00 201280-00
201282-00 201283-00 201284-00 201286-00 201287-00 201289-00
201290-00 201291-00 201292-00 201293-00 201294-00 201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201291-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DENNIS S VOSS
PO BOX 297
TWO DOT, MT 59085 0297

ERICA BORBE
PO BOX 297
TWO DOT, MT 59085 0297

Priority Date: MAY 15, 1889

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.15 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201290-00, 40A 201291-00, AND 40A 201295-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 158.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: SANFORD MOORE DITCH (EAST BANK)

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	77.30		W2	12	7N	13E	WHEATLAND
2	80.00		E2	13	7N	13E	WHEATLAND
3	1.10		NW	13	7N	13E	WHEATLAND
Total:	158.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201290-00 201291-00 201295-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201292-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HORSE BUTTE RANCH LLC
PO BOX 297
TWO DOT, MT 59085

Priority Date: APRIL 30, 1888

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.95 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

Volume: 3,004.44 AC-FT

STANDARDS ON VOLUMES FOUND IN THE FINDINGS OF FACT ARE ONLY GUIDELINES. THE VOLUME CALCULATED USING THESE STANDARDS MAY BE MODIFIED BY THE COURT ON INDIVIDUAL OBJECTION.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 522.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

2		NWSE	32	7N	13E	WHEATLAND
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: E. L. SHUMAKER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

ALKALI CREEK IS USED AS A NATURAL CARRIER TO DELIVER THE WATER DIVERTED THROUGH THE E.L. SHUMAKER DITCH TO THE PLACE OF USE.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING: THE FOLLOWING INSTRUCTIONS SHALL APPLY TO CLAIMANTS' USE OF THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE FOX REPLACEMENT DITCH IN THE NENESE SEC. 24, 7N, 13E, IN LIEU OF AND SUBSTITUTE FOR THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH IN THE NWSE SEC. 32, 7N, 13E, TO DIVERT AND USE ANY OF THE WATERS COVERED BY THESE RIGHTS, IN ORDER TO PREVENT ANY ADVERSE EFFECT OR INJURY TO THE OTHER WATER USERS ON BIG ELK CREEK AND ITS TRIBUTARIES.

(A) THE FLOW RATE AVAILABLE FOR DIVERSION THROUGH AND BY MEANS OF THE FOX REPLACEMENT DITCH TO SATISFY THESE RIGHTS SHALL BE LIMITED TO THE AMOUNT OF WATER AVAILABLE AT THE E. L. SHUMAKER DITCH AS MEASURED AT THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH;

(B) WATER DIVERTED BY MEANS OF THE FOX REPLACEMENT DITCH SHALL NOT EXCEED THE CARRYING CAPACITY OF THE EXISTING MEANS OF DIVERSION TO-WIT: A 24 INCH SLIDE GATE AT THE POINT OF DIVERSION AND 24 INCH CORRUGATED METAL PIPE, 20 FEET LONG, SERVING AS A CULVERT IN THE DITCH RUNNING UNDER THE ROAD WHICH RUNS SOUTH OUT OF TWO DOT.

(C) THE WATER RIGHTS LISTED BELOW SHALL NOT BE SUBJECT TO CALL TO SATISFY THIS WATER RIGHT:

- (1) 40A 5024-00, 40A 5025-00, 40A 5026-00, 40A 5027-00, AND 40A 6661-00
- (2) 40A 198477-00, 40A 198478-00, 40A 198479-00, 40A 198480-00, 40A 198481-00, 40A 198482-00, AND 40A 198483-00
- (3) 40A 110017-00, 40A 110018-00, 40A 110019-00, 40A 110020-00, 40A 110021-00, AND 40A 110026-00, AND
- (4) ANY RIGHTS WITH A DATE OF PRIORITY PRIOR TO 1964 OUT OF ANY TRIBUTARY TO BIG ELK CREEK WHICH ENTERS BIG ELK CREEK AT A POINT BETWEEN THE E. L. SHUMAKER DITCH (NWSE SEC. 32, 7N, 13E) AND THE FOX REPLACEMENT DITCH (NENESE SEC. 24, 7N, 13E) INCLUDING BUT NOT LIMITED TO ANY SUCH DIVERSIONS FROM BEAR CREEK AND CROOKED CREEK.

THIS WATER RIGHT INVOLVES TWO RESERVOIRS. TWO DOT RESERVOIR IS ON ALKALI CREEK. EXCESS WATER IMPOUNDED BY THIS DAM FILLS AN OFF STREAM RESERVOIR WEST OF IT (FOX RESERVOIR). WATER IS TRANSFERRED FROM TWO DOT RESERVOIR TO FOX RESERVOIR VIA A SPILLWAY.

***Reservoir:**

OFFSTREAM **Reservoir Name:** FOX RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	10	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 36.00 ACRES

Capacity: 204.00 ACRE-FEET

*Reservoir: OFFSTREAM Reservoir Name: TWODOT RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2	11	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.00 FEET

Depth: 28.00 FEET

Surface Area: 42.00 ACRES

Capacity: 555.00 ACRE-FEET

SEE THE LEWISTOWN REGIONAL OFFICE ENGINEER EMAIL DATED 05/06/2013 IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR FOX RESERVOIR.

SEE THE PHASE 1 INSPECTION REPORT FOR THE NATIONAL DAM SAFETY PROGRAM IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR TWODOT RESERVOIR.

SEE THE NATIONAL INVENTORY OF DAMS REPORTS IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR BOTH TWODOT RESERVOIR AND FOX RESERVOIR (ALSO KNOWN AS FOX, BILL IRRIGATION).

*Period of Use: MARCH 1 TO NOVEMBER 15

*Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.20		NW	2	7N	13E	WHEATLAND
2	25.90		SW	2	7N	13E	WHEATLAND
3	94.60		NE	3	7N	13E	WHEATLAND
4	35.70		SE	3	7N	13E	WHEATLAND
5	7.80		NE	34	8N	13E	WHEATLAND
6	117.30		NW	34	8N	13E	WHEATLAND
7	84.40		SE	34	8N	13E	WHEATLAND
8	89.20		SW	34	8N	13E	WHEATLAND
9	17.30		SW	35	8N	13E	WHEATLAND
Total:	522.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201293-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HORSE BUTTE RANCH LLC
PO BOX 297
TWO DOT, MT 59085

Priority Date: APRIL 30, 1887

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.70 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

Volume: 734.90 AC-FT

STANDARDS ON VOLUMES FOUND IN THE FINDINGS OF FACT ARE ONLY GUIDELINES. THE VOLUME CALCULATED USING THESE STANDARDS MAY BE MODIFIED BY THE COURT ON INDIVIDUAL OBJECTION.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 522.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

2		NWSE	32	7N	13E	WHEATLAND
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: E. L. SHUMAKER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

ALKALI CREEK IS USED AS A NATURAL CARRIER TO DELIVER THE WATER DIVERTED THROUGH THE E.L. SHUMAKER DITCH TO THE PLACE OF USE.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING: THE FOLLOWING INSTRUCTIONS SHALL APPLY TO CLAIMANTS' USE OF THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE FOX REPLACEMENT DITCH IN THE NENESE SEC. 24, 7N, 13E, IN LIEU OF AND SUBSTITUTE FOR THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH IN THE NWSE SEC. 32, 7N, 13E, TO DIVERT AND USE ANY OF THE WATERS COVERED BY THESE RIGHTS, IN ORDER TO PREVENT ANY ADVERSE EFFECT OR INJURY TO THE OTHER WATER USERS ON BIG ELK CREEK AND ITS TRIBUTARIES.

(A) THE FLOW RATE AVAILABLE FOR DIVERSION THROUGH AND BY MEANS OF THE FOX REPLACEMENT DITCH TO SATISFY THESE RIGHTS SHALL BE LIMITED TO THE AMOUNT OF WATER AVAILABLE AT THE E. L. SHUMAKER DITCH AS MEASURED AT THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH;

(B) WATER DIVERTED BY MEANS OF THE FOX REPLACEMENT DITCH SHALL NOT EXCEED THE CARRYING CAPACITY OF THE EXISTING MEANS OF DIVERSION TO-WIT: A 24 INCH SLIDE GATE AT THE POINT OF DIVERSION AND 24 INCH CORRUGATED METAL PIPE, 20 FEET LONG, SERVING AS A CULVERT IN THE DITCH RUNNING UNDER THE ROAD WHICH RUNS SOUTH OUT OF TWO DOT.

(C) THE WATER RIGHTS LISTED BELOW SHALL NOT BE SUBJECT TO CALL TO SATISFY THIS WATER RIGHT:

- (1) 40A 5024-00, 40A 5025-00, 40A 5026-00, 40A 5027-00, AND 40A 6661-00
- (2) 40A 198477-00, 40A 198478-00, 40A 198479-00, 40A 198480-00, 40A 198481-00, 40A 198482-00, AND 40A 198483-00
- (3) 40A 110017-00, 40A 110018-00, 40A 110019-00, 40A 110020-00, 40A 110021-00, AND 40A 110026-00, AND
- (4) ANY RIGHTS WITH A DATE OF PRIORITY PRIOR TO 1964 OUT OF ANY TRIBUTARY TO BIG ELK CREEK WHICH ENTERS BIG ELK CREEK AT A POINT BETWEEN THE E. L. SHUMAKER DITCH (NWSE SEC. 32, 7N, 13E) AND THE FOX REPLACEMENT DITCH (NENESE SEC. 24, 7N, 13E) INCLUDING BUT NOT LIMITED TO ANY SUCH DIVERSIONS FROM BEAR CREEK AND CROOKED CREEK.

THIS WATER RIGHT INVOLVES TWO RESERVOIRS. TWO DOT RESERVOIR IS ON ALKALI CREEK. EXCESS WATER IMPOUNDED BY THIS DAM FILLS AN OFF STREAM RESERVOIR WEST OF IT (FOX RESERVOIR). WATER IS TRANSFERRED FROM TWO DOT RESERVOIR TO FOX RESERVOIR VIA A SPILLWAY.

***Reservoir:**

OFFSTREAM **Reservoir Name:** FOX RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	10	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 36.00 ACRES

Capacity: 204.00 ACRE-FEET

***Reservoir:** OFFSTREAM **Reservoir Name:** TWODOT RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2	11	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.00 FEET

Depth: 28.00 FEET

Surface Area: 42.00 ACRES

Capacity: 555.00 ACRE-FEET

SEE THE LEWISTOWN REGIONAL OFFICE ENGINEER EMAIL DATED 05/06/2013 IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR FOX RESERVOIR.

SEE THE PHASE 1 INSPECTION REPORT FOR THE NATIONAL DAM SAFETY PROGRAM IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR TWODOT RESERVOIR.

SEE THE NATIONAL INVENTORY OF DAMS REPORTS IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR BOTH TWODOT RESERVOIR AND FOX RESERVOIR (ALSO KNOWN AS FOX, BILL IRRIGATION).

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.20		NW	2	7N	13E	WHEATLAND
2	25.90		SW	2	7N	13E	WHEATLAND
3	94.60		NE	3	7N	13E	WHEATLAND
4	35.70		SE	3	7N	13E	WHEATLAND
5	7.80		NE	34	8N	13E	WHEATLAND
6	117.30		NW	34	8N	13E	WHEATLAND
7	84.40		SE	34	8N	13E	WHEATLAND
8	89.20		SW	34	8N	13E	WHEATLAND
9	17.30		SW	35	8N	13E	WHEATLAND
Total:	522.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201294-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HORSE BUTTE RANCH LLC
PO BOX 297
TWO DOT, MT 59085

Priority Date: JUNE 1, 1898

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.00 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201287-00, 40A 201288-00, 40A 201289-00, 40A 201292-00, 40A 201293-00, AND 40A 201294-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

Volume: 2,593.76 AC-FT

STANDARDS ON VOLUMES FOUND IN THE FINDINGS OF FACT ARE ONLY GUIDELINES. THE VOLUME CALCULATED USING THESE STANDARDS MAY BE MODIFIED BY THE COURT ON INDIVIDUAL OBJECTION.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 522.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: FOX REPLACEMENT (WEST BANK) DITCH

2		NWSE	32	7N	13E	WHEATLAND
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***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: E. L. SHUMAKER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

ALKALI CREEK IS USED AS A NATURAL CARRIER TO DELIVER THE WATER DIVERTED THROUGH THE E.L. SHUMAKER DITCH TO THE PLACE OF USE.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING: THE FOLLOWING INSTRUCTIONS SHALL APPLY TO CLAIMANTS' USE OF THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE FOX REPLACEMENT DITCH IN THE NENESE SEC. 24, 7N, 13E, IN LIEU OF AND SUBSTITUTE FOR THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH IN THE NWSE SEC. 32, 7N, 13E, TO DIVERT AND USE ANY OF THE WATERS COVERED BY THESE RIGHTS, IN ORDER TO PREVENT ANY ADVERSE EFFECT OR INJURY TO THE OTHER WATER USERS ON BIG ELK CREEK AND ITS TRIBUTARIES.

(A) THE FLOW RATE AVAILABLE FOR DIVERSION THROUGH AND BY MEANS OF THE FOX REPLACEMENT DITCH TO SATISFY THESE RIGHTS SHALL BE LIMITED TO THE AMOUNT OF WATER AVAILABLE AT THE E. L. SHUMAKER DITCH AS MEASURED AT THE POINT OF DIVERSION AND MEANS OF DIVERSION FOR THE E. L. SHUMAKER DITCH;

(B) WATER DIVERTED BY MEANS OF THE FOX REPLACEMENT DITCH SHALL NOT EXCEED THE CARRYING CAPACITY OF THE EXISTING MEANS OF DIVERSION TO-WIT: A 24 INCH SLIDE GATE AT THE POINT OF DIVERSION AND 24 INCH CORRUGATED METAL PIPE, 20 FEET LONG, SERVING AS A CULVERT IN THE DITCH RUNNING UNDER THE ROAD WHICH RUNS SOUTH OUT OF TWO DOT.

(C) THE WATER RIGHTS LISTED BELOW SHALL NOT BE SUBJECT TO CALL TO SATISFY THIS WATER RIGHT:

- (1) 40A 5024-00, 40A 5025-00, 40A 5026-00, 40A 5027-00, AND 40A 6661-00
- (2) 40A 198477-00, 40A 198478-00, 40A 198479-00, 40A 198480-00, 40A 198481-00, 40A 198482-00, AND 40A 198483-00
- (3) 40A 110017-00, 40A 110018-00, 40A 110019-00, 40A 110020-00, 40A 110021-00, AND 40A 110026-00, AND
- (4) ANY RIGHTS WITH A DATE OF PRIORITY PRIOR TO 1964 OUT OF ANY TRIBUTARY TO BIG ELK CREEK WHICH ENTERS BIG ELK CREEK AT A POINT BETWEEN THE E. L. SHUMAKER DITCH (NWSE SEC. 32, 7N, 13E) AND THE FOX REPLACEMENT DITCH (NENESE SEC. 24, 7N, 13E) INCLUDING BUT NOT LIMITED TO ANY SUCH DIVERSIONS FROM BEAR CREEK AND CROOKED CREEK.

THIS WATER RIGHT INVOLVES TWO RESERVOIRS. TWO DOT RESERVOIR IS ON ALKALI CREEK. EXCESS WATER IMPOUNDED BY THIS DAM FILLS AN OFF STREAM RESERVOIR WEST OF IT (FOX RESERVOIR). WATER IS TRANSFERRED FROM TWO DOT RESERVOIR TO FOX RESERVOIR VIA A SPILLWAY.

***Reservoir:**

OFFSTREAM **Reservoir Name:** FOX RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	10	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 36.00 ACRES

Capacity: 204.00 ACRE-FEET

***Reservoir:** OFFSTREAM **Reservoir Name:** TWODOT RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	W2	11	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.00 FEET

Depth: 28.00 FEET

Surface Area: 42.00 ACRES

Capacity: 555.00 ACRE-FEET

SEE THE LEWISTOWN REGIONAL OFFICE ENGINEER EMAIL DATED 05/06/2013 IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR FOX RESERVOIR.

SEE THE PHASE 1 INSPECTION REPORT FOR THE NATIONAL DAM SAFETY PROGRAM IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR TWODOT RESERVOIR.

SEE THE NATIONAL INVENTORY OF DAMS REPORTS IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA FOR BOTH TWODOT RESERVOIR AND FOX RESERVOIR (ALSO KNOWN AS FOX, BILL IRRIGATION).

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.20		NW	2	7N	13E	WHEATLAND
2	25.90		SW	2	7N	13E	WHEATLAND
3	94.60		NE	3	7N	13E	WHEATLAND
4	35.70		SE	3	7N	13E	WHEATLAND
5	7.80		NE	34	8N	13E	WHEATLAND
6	117.30		NW	34	8N	13E	WHEATLAND
7	84.40		SE	34	8N	13E	WHEATLAND
8	89.20		SW	34	8N	13E	WHEATLAND
9	17.30		SW	35	8N	13E	WHEATLAND
Total:	522.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 201295-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DENNIS S VOSS
PO BOX 297
TWO DOT, MT 59085 0297

ERICA BORBE
PO BOX 297
TWO DOT, MT 59085 0297

Priority Date: JUNE 15, 1891

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.95 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 201290-00, 40A 201291-00, AND 40A 201295-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 158.40

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	24	7N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: SANFORD MOORE DITCH (EAST BANK)

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: WATER RIGHTS 40A 198477-00 AND 40A 198480-00 WERE HISTORICALLY DIVERTED FROM BIG ELK CREEK BETWEEN THE POINT OF DIVERSION KNOWN AS THE SHUMAKER-MOORE DITCH ON THE SOUTH BORDER OF SECTION 35, T7N, R13E AND THE CURRENT POINT OF DIVERSION ON THE EAST BANK OF BIG ELK CREEK, KNOWN AS THE SANFORD MOORE DITCH, IN THE NENESE SECTION 24, T7N, R13E. THE ABOVE-DESIGNATED RIGHTS, THEREFORE, ARE NOT SUBJECT TO CALL TO SATISFY WATER RIGHT 40A 201295-00.

***Period of Use:** MARCH 1 TO NOVEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	77.30		W2	12	7N	13E	WHEATLAND
2	80.00		E2	13	7N	13E	WHEATLAND
3	1.10		NW	13	7N	13E	WHEATLAND
Total:	158.40						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201290-00 201291-00 201295-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

201270-00	201272-00	201273-00	201274-00	201277-00	201280-00
201282-00	201283-00	201284-00	201286-00	201287-00	201289-00
201290-00	201291-00	201292-00	201293-00	201294-00	201295-00